

ENVIRONMENTAL QUALITY

CHAPTER 36

SUBDIVISIONS/ON-SITE  
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17.36.305

Sub-Chapter 3

Subdivision Requirements

17.36.301 LOT SIZES IS REPEALED (History: 76-4-104, MCA; IMP, 76-4-104, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; REP, 2002 MAR p. 1465, Eff. 5/17/02.)

17.36.302 PUBLIC WATER AND SEWER IS REPEALED (History: 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; REP, 2002 MAR p. 1465, Eff. 5/17/02.)

17.36.303 INDIVIDUAL WATER SUPPLY SYSTEMS IS REPEALED (History: 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1984 MAR p. 1568, Eff. 10/26/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 1997 MAR p. 1458, Eff. 8/19/97; REP, 2002 MAR p. 1465, Eff. 5/17/02.)

17.36.304 INDIVIDUAL SEWAGE TREATMENT SYSTEMS IS REPEALED (History: 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1984 MAR p. 1568, Eff. 10/26/84; AMD, 1984 MAR p. 1801, Eff. 12/14/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; REP, 2000 MAR p. 3371, Eff. 12/8/00.)

17.36.305 MULTIPLE USER WATER SUPPLY SYSTEMS IS REPEALED (History: 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1984 MAR p. 1568, Eff. 10/26/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2000 MAR p. 3371, Eff. 12/8/00; REP, 2002 MAR p. 1465, Eff. 5/17/02.)

Rules 17.36.306 through 17.36.308 reserved

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17.36.310

17.36.309 SOLID WASTES (1) Solid wastes stored within the subdivision must be placed in adequate containers and removed at a frequency to prevent a nuisance. When removed from the subdivision, the solid wastes must be disposed of at a department-licensed site in accordance with ARM 17.50.508 or an appropriate out-of-state waste disposal site. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 1465, Eff. 5/17/02.)

17.36.310 STORM DRAINAGE (1) The applicant shall submit a storm drainage plan to the reviewing authority. The plan must conform with the requirements of either (2) or (3).

(2) Except as provided in (3), a storm drainage plan must be designed in accordance with department Circular DEQ-8.

(a) for lots proposed for uses other than as single-family dwellings, a storm drainage plan submitted under (2) must be prepared by a registered professional engineer;

(b) a storm drainage plan submitted under (2) must include a maintenance plan for all drainage structures. The maintenance plan must describe the maintenance structures, provide a maintenance schedule, and designate the entity responsible for performing maintenance. The reviewing authority may require the applicant to create a homeowner's association or other legal entity that will be responsible for maintenance of storm drainage structures and that will have authority to charge appropriate fees. The maintenance plan must include easements and agreements as necessary for operation and maintenance of all proposed off-site storm drainage structures or facilities.

(3) A storm drainage plan is not subject to the requirements of (2) if:

(a) the proposed subdivision has five or fewer lots;

(b) the area of disturbance within the proposed subdivision has a slope of 3% or less;

(c) unvegetated areas including, but not limited to, road surfaces, road cuts and fills, roofs, and driveways, comprise less than 15% of the total acreage of the proposed subdivision;

(d) drainage structures, such as road ditches, will be constructed;

(e) completion of the proposed subdivision will not increase the amount of pre-development storm water runoff from the area;

(f) the proposed subdivision will not alter pre-development water flow patterns; and

(g) the applicant provides the reviewing authority with a 7 1/2 minute USGS topographic map showing the proposed subdivision and, if available, a map with contour intervals no greater than 20 feet that shows drainage patterns.

(4) If fill material will be placed within a delineated floodplain, the applicant shall provide evidence that the floodplain permit coordinator has been notified and that appropriate approvals have been obtained.

(5) If applicable, the applicant shall obtain an MPDES permit for storm water discharges, pursuant to ARM Title 17, chapter 30.

(6) Storm water that reaches state surface waters must be treated prior to discharge if the reviewing authority determines that untreated storm water is likely to degrade the receiving waters.

(a) minimum treatment of storm water consists of removal of settleable solids and floatable material. The reviewing authority may require more extensive treatment if deemed necessary to protect state waters from degradation;

(b) plans for the treatment facility must be approved by the reviewing authority.

(7) The department may grant a waiver from any of the requirements in this rule pursuant to the provisions of ARM 17.36.601. (History: 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03.)

Rule 17.36.311 reserved

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17.36.313

17.36.312 SUBDIVISIONS ADJACENT TO STATE WATERS

(1) Where the department has determined that the disposal of sewage from a proposed subdivision may adversely affect the quality of a lake or other state waters, the department may require additional information and data concerning such possible effects. Upon review of such information, the department may impose specific requirements for sewage treatment and disposal as are necessary and appropriate to assure compliance with the Water Quality Act, Title 75, chapter 5, MCA, and water quality and non-degradation standards, ARM Title 17, chapter 30, subchapters 6, 7, 10 and 12.

(2) The department hereby adopts and incorporates by reference ARM Title 17, chapter 30, subchapters 6, 7, 10 and 12, which set forth water quality standards for state surface waters. Copies of ARM Title 17, chapter 30, subchapters 6, 7, 10 and 12, may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901. (History: 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; NEW, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499.)

17.36.313 CONDOMINIUM CONVERSIONS (1) Except as provided in (2) and (3) of this rule, condominiums, including those to be constructed on parcels of land that are exempted from review under the provisions of Title 76, chapter 3, MCA, and including conversion of existing structures into condominiums, are subject to review under the requirements of this chapter.

(2) Conversions of existing structures into condominiums are not subject to this chapter where the converted units are to be served by existing municipal water and sewer facilities in a Class I or II city as defined in 7-1-4111, MCA.

(3) Where the water or sewage disposal system in an existing building to be converted into condominiums has already been approved under either department requirements or has been approved by the local health department under local requirements, such water or sewage disposal system is not subject to review under this chapter. (History: 76-4-104, MCA; IMP, 76-4-111, 76-4-125, MCA; NEW, 1984 MAR p. 1027, Eff. 7/13/84; TRANS, from DHES, 1996 MAR p. 1499.)

Rules 17.36.314 through 17.36.319 reserved

SUBDIVISIONS/ON-SITE  
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17.36.320

17.36.320 SEWAGE SYSTEMS: DESIGN (1) All components of subsurface sewage treatment systems must be designed and installed in accordance with department Circular DEQ-4. As indicated on Table 2 of this rule, public systems and multi-user systems with design flows greater than or equal to 2500 gallons per day must be designed by a registered professional engineer.

(2) A minimum separation of at least four feet of natural soil must exist between the infiltrative surface or the liner of a lined system and a limiting layer, except that at least six feet of natural soil must exist on a steep slope (15% to 25%).

(3) The proposed subsurface sewage treatment area must include an area for 100% replacement of the system. Unless a waiver is approved by the department pursuant to ARM 17.36.601, the replacement area must meet the same requirements as the primary area. If the replacement area is not immediately adjacent to the primary area, or if the department indicates to the applicant that it has reason to believe that site conditions for the replacement area may vary from those for the primary area, the applicant shall submit adequate evidence of the suitability of the replacement area.

TABLE 2  
ALLOWABLE SYSTEMS, REQUIREMENTS

	YES - Systems that are allowed NO - Systems that are not allowed			
DEQ-4 System	Public: > 5000 gpd (1) (7)	Public or Multiple -user: ≥ 2500 gpd and ≤ 5000 gpd (2) (7)	Public or Multiple- user: < 2500 gpd (3)	Individual /Shared: (6)
Standard Absorption Trench	NO	NO	YES	YES
At-Grade Systems	NO	NO	YES	YES
Gravelless	YES	YES	YES	YES
Deep Trench	NO	NO	NO	YES
Elevated Sand Mound	YES	YES	YES	YES
Evapotranspiration (ET) Systems	NO	NO	NO	NO (5)
ET-Absorption	NO	YES	YES	YES
Intermittent Sand Filters	YES	YES	YES	YES
Recirculating Sand Filters	YES	YES	YES	YES
Recirculating Trickling Filters	YES	YES	YES	YES



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	YES - Systems that are allowed NO - Systems that are not allowed			
DEQ-4 System	Public: > 5000 gpd  (1)	Public or Multiple -user: ≥ 2500 gpd and ≤ 5000 gpd (2)	Public or Multiple- user: < 2500 gpd (3)	Individual /Shared:  (6)
Chemical Nutrient Reduction; Aerobic Sewage Treatment Systems	NO (5)	NO (5)	NO (5)	NO (4) (5)
Pressure Distribution	YES	YES	YES	YES
Sand-lined Absorption Trenches	NO	YES	YES	YES
Experimental Systems	NO (5)	NO (5)	NO (5)	NO (5)

(1) Public systems with design flow greater than 5000 gallons per day (gpd).

(2) Public or multiple-user systems with design flow greater than or equal to 2500 gpd and less than or equal to 5000 gpd.

(3) Public or multiple-user systems with design flow less than 2500 gpd.

(4) Means of securing continuous operation and maintenance of these systems must be approved by the reviewing authority prior to DEQ approval.

(5) May be allowed by waiver, pursuant to ARM 17.36.601.

(6) Individual or shared commercial sewage systems that have a design flow greater than 700 gpd shall be considered multi-user.

(7) Must be designed by a professional engineer. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03.)

17.36.321 SEWAGE SYSTEMS: ALLOWABLE NEW AND REPLACEMENT SYSTEMS

(1) The allowable new sewage treatment systems, together with certain other requirements for such systems, are indicated in Table 2 of ARM 17.36.320. All systems must be designed and installed in accordance with department Circular DEQ-4. The use of sewage systems for replacement systems shall be in accordance with department Circular DEQ-4. Requirements applicable to review of existing sewage treatment systems are set out in ARM 17.36.327.

(2) Systems designed in accordance with department Circular DEQ-2, may not be used for individual, shared, or multi-user systems.

(3) The following sewage systems may not be used for new systems:

- (a) cut systems;
- (b) fill systems;
- (c) artificially drained systems;
- (d) cesspools;
- (e) pit privies;
- (f) seepage pits; and
- (g) holding tanks.

(i) The department may grant a waiver, pursuant to ARM 17.36.601, to allow holding tanks for recreational vehicle dump stations in facilities owned and operated by a local, state, or federal unit of government, or in facilities licensed by the department of public health and human services and inspected by the local health department. Holding tanks must be designed and maintained in accordance with the requirements in department Circular DEQ-4 and all other requirements imposed by the department and local health department.

(4) The following systems may be used only as replacement systems, subject to the limitations provided in department Circular DEQ-4:

- (a) cut systems;
- (b) fill systems; and
- (c) artificially drained systems.

(5) Sealed pit privies may be used only in facilities owned and operated by a local, state, or federal unit of government, or in facilities where use of a sealed pit privy is authorized by the department of public health and human services. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2003 MAR p. 221, Eff. 2/14/03.)

17.36.322 SEWAGE SYSTEMS: SITING (1) Subsurface sewage treatment systems may not be used if natural slopes are greater than 15%; however, the department may, by waiver granted pursuant to ARM 17.36.601, allow a sewage treatment system with a design flow of 5000 gallons per day or less on slopes between 15% and 25%, if a registered professional engineer or a person

qualified to evaluate and identify soil in accordance with ASTM standard D5921-96e1 (Standard Practice for Subsurface Site Characterization of Test Pits for On-Site Septic Systems) submits adequate evidence that there will be no visible outflow of liquid downslope from the subsurface sewage treatment system.

(2) Subsurface sewage systems may not be installed on unstable landforms, as defined in ARM 17.36.320.

(3) No component of any sewage treatment system may be located under structures or driveways, parking areas or other areas subjected to vehicular traffic, except for those components of the system designed to accommodate such conditions. Drainfields must not be located in swales or depressions where runoff may flow or accumulate.

(4) For lots one acre in size or less, the applicant shall physically identify the drainfield location by staking or other acceptable means of identification. For lots greater than one acre in size, the department may require the applicant to physically identify the drainfield location.

(5) The department may require the applicant to show detailed lot layouts on a contour map if the department determines that there is a question about suitability of the drainfield location. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00.)

17.36.323 SEWAGE SYSTEMS: HORIZONTAL SETBACKS; WAIVERS

(1) Minimum horizontal setback distances (in feet) shown in Table 3 of this rule must be maintained.

(2) A waiver of the setback distance for a cistern may be granted by the department, pursuant to ARM 17.36.601, if the applicant demonstrates that the elevation of the cistern is higher than the elevation of the septic tank, other components, or drainfield/sand mound.

(3) A waiver of the setback distance between drainfields/sand mounds and surface waters, springs, and floodplains may be granted by the department, pursuant to ARM 17.36.601, only if:

(a) the applicant demonstrates that ground water flow at the drainfield site cannot flow into the surface water or spring; or

(b) the surface water or spring seasonally high water level is a minimum of 100 feet horizontal distance from the drainfield and the bottom of the drainfield will be at least two feet above floodplain elevation.

(4) The department may require more than 100 feet of separation from the floodplain or from surface water or springs if it determines that site conditions or water quality nondegradation requirements indicate a need for the greater distance.

TABLE 3  
SETBACK DISTANCES

	Water Supply Wells	Sealed Components (1) and Other Components (2)	Drainfield/ Sand Mounds
Public or Multi-user Wells/Springs	-	100	100
Other Wells	-	50	100
Suction Lines	-	50	100
Cisterns	-	25	50
Roadcuts, Escarpment	-	10 (3)	25
Slopes > 25% (4)	-	10 (3)	25
Property Boundaries	10	10	10
Subsurface Drains	-	10	10
Water Lines	-	10	10
Drainfields/ Sand Mounds	100	10	-
Foundation Walls	-	10	10
Surface Water, Springs	100 (5)	50	100
Floodplains	10	- (1) 100 (2)	100

(1) Sealed components include sewer lines, sewer mains, septic tanks, grease traps, dosing tanks and pumping chambers.

(2) Other components include intermittent and recirculating sand filters, package plants and evapotranspiration systems.

(3) Sewer lines and sewer mains may be located in roadways and on steep slopes if the lines and mains are safeguarded against damage.

(4) Down-gradient of the sealed component, other component, or drainfield/sand mound.

(5) A waiver of this requirement may be granted by the department pursuant to ARM 17.36.601. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00.)

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17.36.324 SEWAGE SYSTEMS: FLOODPLAINS (1) The applicant shall identify the location of any floodplain on the lot layout document. The department may require the applicant to provide additional information, such as elevations at specific locations.

(2) The applicant shall submit evidence adequate to allow the department to establish the location of the floodplain if:

(a) the federal or state government has not designated the floodplain, or if the location of the floodplain is in question with respect to a proposed subdivision; and

(b) the stream is shown as an intermittent or perennial stream on the most current USGS 7 1/2 minute (1:24,000) topographic map (unless the applicant provides adequate information that the stream is not subject to flooding). (History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00.)

17.36.325 SEWAGE SYSTEMS: SITE EVALUATION (1) The reviewing authority may require that percolation tests, conducted in accordance with department Circular DEQ-4, be performed within the boundary of each proposed subsurface sewage treatment system. Percolation tests must be keyed by a number on the lot layout to the results in the report form.

(2) If the applicant or the department has reason to believe that ground water will be within seven feet of the surface at any time of the year within the boundaries of the treatment system, the applicant shall install ground water level observation pipes to a depth of at least eight feet to determine the seasonally high ground water level. The applicant shall monitor the observation pipes through the seasonally high ground water period.

(3) The applicant shall provide descriptions of the soils within 25 feet of the boundaries of each proposed drainfield. Soil descriptions must address the characteristics used in the U.S. Department of Agriculture's National Soil Survey Handbook (USDA, NRCS, September 1999), and the Soil Survey Manual (USDA, October 1993). These characteristics include, but are not limited to, soil texture, soil structure, soil consistence and indicators of redoximorphic features. Soil descriptions must meet the following requirements:

(a) Soil descriptions for the proposed subdivision must be based on data obtained from test holes. Test holes must be at least eight feet in depth;

(b) At least one test hole must be dug for each individual drainfield and for each shared (two-user) drainfield, unless a waiver is approved by the department pursuant to ARM 17.36.601. Before a waiver is requested and granted, the applicant must complete test holes for 25% of the proposed drainfield locations in the subdivision, demonstrate that the soils are consistent throughout the area requested for a waiver, and must obtain the approval of the local reviewing authority for reduction in number of test holes. At least three test holes must be dug for each multiple-user and public drainfield, unless a waiver is approved by the department pursuant to ARM 17.36.601. At least one test hole must be dug in each zone of a pressure-dosed drainfield, unless a waiver is approved by the department pursuant to ARM 17.36.601. The department shall require additional test holes if it determines that there is significant variability of the soils in the proposed drainfield area;

(c) Test holes must be located within 25 feet of the boundaries of the proposed drainfield. The locations must be established by a person qualified to evaluate and identify soil in accordance with ASTM standard D5921-96e1 (Standard Practice for Subsurface Site Characterization of Test Pits for On-Site Septic Systems);

(d) If the applicant or the department has reason to believe that a limiting layer is within seven feet of the ground surface at the site of proposed subsurface sewage treatment systems, additional test pits and soil descriptions sufficient to describe the suitability of the soil must be provided; and

(e) Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the report. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03.)

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17.36.326

17.36.326 SEWAGE SYSTEMS: AGREEMENTS AND EASEMENTS

(1) The applicant shall demonstrate that all public, multiple-user, and shared sewage systems will be adequately operated and maintained and shall submit an operation and maintenance manual acceptable to the department.

(2) For public and multiple-user systems, a homeowners' association, county sewer district, or other administrative entity, with the power to charge appropriate fees, must be established as part of the operation and maintenance plan required by department Circular DEQ-4.

(3) For public, multiple-user, and shared systems, easements must be obtained to allow adequate operation and maintenance of the system. Easements must be in a form acceptable to the department.

(4) Users of shared sewage systems must have an agreement that identifies the rights of each user. Shared user agreements must be in a form acceptable to the department. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2003 MAR p. 221, Eff. 2/14/03.)

17.36.327 SEWAGE SYSTEMS: EXISTING SYSTEMS (1) If an existing sewage treatment system is present, the department shall review the adequacy of the existing system for the proposed use and the capability of the existing system to operate without risk to public health and without pollution of state waters. To assist the department in making this determination, the applicant shall submit the following information:

(a) evidence demonstrating the proper hydraulic functioning of each existing system;

(b) evidence as to whether each existing system complied with state and local laws and regulations, including permit requirements, applicable at the time of installation; and

(c) evidence that each existing septic tank was pumped within three years prior to the department's review unless the existing septic tank is less than five years old.

(2) Unless a waiver is approved by the department pursuant to ARM 17.36.601, the drainfields and sand mounds for existing systems must be located at least 100 feet from wells.

(3) The applicant shall provide for a replacement area for each existing system. Unless a waiver is approved by the department pursuant to ARM 17.36.601, replacement areas must comply with the requirements of this subchapter.

(4) Existing cesspools, pit privies, and holding tanks must be replaced by a system approved under this subchapter. Existing sealed pit privies must also be replaced, unless they are at a facility owned and operated by a local, state, or federal unit of government, or are at a facility where use of a sealed pit privy is authorized by the department of public health and human services. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02.)

17.36.328 PUBLIC WATER SUPPLY AND WASTEWATER SYSTEMS

(1) A proposed subdivision must be connected to a public water supply or wastewater system if any boundary of the subdivision is within 500 feet of the public system and the public system meets the requirements of (2)(a) and (b). The department may grant a waiver, pursuant to ARM 17.36.601, of the requirement to connect to a public system if the applicant demonstrates that connection to the public system is physically or economically impractical, or that easements can not be obtained. For purposes of this rule, a connection is economically practical if the cost of connection is less than



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or equal to three times the cost of installation of an approvable system on the site.

(2) The reviewing authority may not approve the connection of a proposed subdivision to an existing public system unless:

(a) the existing public system is approved by the department and is in compliance with the provisions of Title 75, chapter 6, part 1, MCA, and ARM Title 17, chapters 30 and 38;

(b) the managing entity of the public system certifies to the reviewing authority, on a form acceptable to the department, that:

(i) the system has an adequate capacity to meet the needs of the subdivision;

(ii) the connections are authorized;

(iii) the system is in compliance with ARM Title 17, chapter 38, and all other applicable department regulations; and

(iv) the appropriate water rights exist for this connection or the managing entity has made application for the appropriate water rights for their system and any connections; and

(c) the applicant submits to the reviewing authority the name and public water supply ID (PWSID) number of the public system.

(3) If the proposed additional connections will create a new public system, the applicant shall submit plans and specifications for the entire system (existing and proposed) for review and approval by the department in accordance with the provisions of Title 75, chapter 6, part 1, MCA, and ARM Title 17, chapters 30 and 38. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02.)

Rule 17.36.329 reserved

17.36.330 WATER SUPPLY SYSTEMS--GENERAL (1) The applicant shall demonstrate that water systems provide an adequate supply by showing that the following criteria are met:

(a) the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2 may not be exceeded;

(b) the following flows must be provided:

(i) for individual and shared water supply systems, the flow indicated in ARM 17.36.332;

(ii) for multiple family water supply systems, the requirements set out in department Circular DEQ-3; and

(iii) for public water supply systems, the requirements set out in department Circular DEQ-1;

(c) the necessary quantity and quality of water must be available at all times unless depleted by emergencies.

(2) If ground water is proposed as a water source, the applicant shall submit the following information:

(a) the location of the proposed ground water source must be shown on the lot layout, indicating distances to any potential sources of contamination within 500 feet and any known mixing zone as defined in ARM 17.30.502. If a potential problem is identified, the reviewing authority may require that all potential sources of contamination be shown in accordance with department Circular PWS-6, 1999 edition; and

(b) a description of the proposed ground water source, including approximate depth to water bearing zones and lithology of the aquifer.

(3) The reviewing authority may restrict the volume of water withdrawn from a proposed water source for a subdivision in order to ensure that an adequate water supply will be available at all times. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03.)

17.36.331 NON-PUBLIC WATER SUPPLY SYSTEMS: WATER QUALITY

(1) For non-public water supply systems, the following water quality requirements must be met:

(a) The applicant shall demonstrate that water quality is sufficient for the proposed subdivision. The reviewing authority may not approve a proposed water supply system if there is evidence that, after appropriate treatment, the concentration of any water quality constituent exceeds the human health standards in department Circular WQB-7, 2001 edition or the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2.

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(b) The applicant shall obtain samples from wells in the proposed subdivision and shall provide analyses of the samples to the reviewing authority. If no wells exist in the proposed subdivision, the reviewing authority may accept samples from nearby water wells that are completed in the same aquifer as that proposed for the subdivision water supply. The samples may not be older than one year prior to the date of application. Water quality data must show the concentration of nitrate (as nitrogen) and specific conductance. The reviewing authority may require testing of wells located near the proposed subdivision for additional constituents for which human health standards are listed in department Circular WQB-7, 2001 edition or in ARM Title 17, chapter 38, subchapter 2, if the reviewing authority believes that those constituents may be present in harmful concentrations. Analyses must be conducted by a laboratory certified by the department of public health and human services for analyses of water samples for public water systems.

(i) the applicant shall provide the well log for every well from which a ground water sample is collected. If a well log is not available, the applicant shall provide information about the well depth and depth to static water level. The reviewing authority may require additional information to demonstrate that ground water quality is sufficient for the proposed subdivision;

(ii) the applicant shall accurately identify, on a topographic map or lot layout document, the location of every well from which a ground water sample is taken; and

(iii) the requirement to sample for nitrate (as nitrogen) and specific conductance does not apply if the reviewing authority determines that information from nearby water wells, which are completed in the same aquifer as that proposed for the subdivision water supply, or a hydrogeological report confirms that the proposed water supply will be of acceptable quality.

(c) The minimum setback distances set out in Table 3 of ARM 17.36.323 must be maintained for all new and existing water sources. A drinking water supply well may not be constructed within a ground water mixing zone granted pursuant to ARM Title 17, chapter 30, subchapter 5.

(d) The reviewing authority may require greater than a 100-foot horizontal separation between a well and surface water if there is a potential that the well may be influenced by contaminants (e.g., giardia lamblia) in the surface water. In determining the appropriate separation between a well and surface water, the reviewing authority may consider factors such as well location, well construction, aquifer material, hydraulic connection between the aquifer and watercourse, and other evidence of the potential for surface water contamination. The reviewing authority may also require that the proposed water source be tested for surface water influence in accordance with department Circular PWS-5, 1999 edition.

(e) Wells must have unperforated casing to a minimum depth of 25 feet below ground surface unless the reviewing authority finds that, based upon geological information provided by the applicant, a lesser depth will ensure that the other requirements of this rule are satisfied. The reviewing authority may require unperforated casing to a depth greater than 25 feet if water of better chemical or microbiological quality can be obtained from a deeper zone.

(f) A surface water or ground water source under the direct influence of surface water, as described in department Circular PWS-5, 1999 edition, may not be used as a water source for a non-public system. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02.)

17.36.332 NON-PUBLIC WATER SUPPLY SYSTEMS: WATER QUANTITY AND DEPENDABILITY (1) The applicant shall demonstrate that ground water quantity is sufficient for the proposed subdivision. The applicant shall show that the following minimum flows are available:

(a) a single-family water system must provide a sustained yield of at least 10 gallons per minute over a one-hour period, six gallons per minute over a two-hour period, or four gallons per minute over a four-hour period. For purposes of the minimum flows identified in this rule, sustained yield must be based on water that is supplied from the aquifer, not from well bore storage; and

(b) a shared water system must provide a sustained yield of at least 15 gallons per minute over a one-hour period or 10 gallons per minute over a two-hour period.

(2) The minimum flows required in (1)(a) and (b) must be demonstrated through one or more of the following:

(a) test wells within the proposed subdivision;

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- (b) well logs and testing of nearby wells;
- (c) hydrogeological reports; or
- (d) ground water modeling.

(3) Multiple-user water supply systems must comply with department Circular DEQ-3. For individual and shared water supply systems, the reviewing authority may require pumping tests for one or more wells to demonstrate sufficient quantity and dependability. The tests must be conducted pursuant to department Circular DEQ-3.

(4) When the proposed water supply is an unconfined aquifer and a significant recharge source is from irrigation ditches or irrigated fields, the reviewing authority may require the applicant to demonstrate that the source will produce a water supply that is sufficient in terms of water quality, quantity and dependability for the proposed subdivision if all irrigation-related recharge to the aquifer is eliminated.

(5) The department may allow, pursuant to a waiver under ARM 17.36.601, a lesser flow than those set out in (1)(a) and (b) if the applicant demonstrates that the water supply system provides a sufficient quantity of water to meet demands and that adequate storage is provided to meet peak demand.

(6) The reviewing authority may require the applicant to submit information in addition to that required in (1) through (5) to demonstrate the dependability of the ground water supply if the reviewing authority believes that dependability is questionable. At a minimum, the applicant shall provide evidence that the aquifer can supply, by itself or through recharge from surrounding geologic units, water to wells in an amount equal to the proposed ground water withdrawals.

(7) If water is to be supplied by means other than individual on-site wells, the reviewing authority shall review the applicant's information about water right ownership and water use agreements to determine the quantity and dependability of the water supply. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03.)

17.36.333 NON-PUBLIC WATER SUPPLY SYSTEMS: DESIGN AND CONSTRUCTION (1) The applicant shall meet the following requirements relating to the design and construction of non-public water supply systems:

(a) individual and shared wells must be constructed in accordance with ARM Title 36, chapter 21, subchapter 6, unless the requirements of this subchapter are more stringent;

(b) multiple-user water supply systems must be designed and constructed in accordance with department Circular DEQ-3,

and ARM Title 36, chapter 21, subchapter 6, unless the requirements of this subchapter are more stringent;

(i) multiple user water supply systems with six or more connections, including connections outside of a proposed subdivision, must be designed by a registered professional engineer and as-built plans must be submitted to the department within 90 days after completion of the system. If an existing system is expanded to serve six or more connections, the expansion must be designed by a registered professional engineer. The reviewing authority may require smaller systems that it determines to be complex (e.g., a water supply system with substantial pressure difference through the distribution system) to be designed by a registered professional engineer;

(ii) if more than one multiple user water system is proposed for a subdivision, the systems must be tied together to ensure greater system reliability. The department may grant a waiver, pursuant to ARM 17.36.601, of this provision if the applicant demonstrates that interconnection of the systems is physically or economically impractical or would create an environmental or public health concern;

(c) the reviewing authority may require additional well construction and/or testing requirements not required in ARM Title 36, chapter 21, subchapter 6 or in department Circular DEQ-3, to ensure that wells within a particular subdivision will provide an adequate water supply. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03.)

17.36.334 WATER SUPPLY SYSTEMS: AGREEMENTS AND EASEMENTS

(1) If a proposed subdivision includes a multiple-user water supply system, the applicant shall submit to the reviewing authority an operation and maintenance plan for the system. The plan must ensure that the multiple-user systems will be adequately operated and maintained. The reviewing authority may require the applicant to create a homeowners' association, county water district, or other administrative entity that will be responsible for operation and maintenance and that will have authority to charge appropriate fees.

(2) If a proposed subdivision includes a shared water supply system, or includes a water supply system shared by two or more commercial facilities, the reviewing authority may require the applicant to submit a draft user agreement that identifies the rights of each user. The user agreement must be signed by all users when the lots are sold. The applicant must also grant or obtain easements to allow adequate operation and

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maintenance of the system. Shared user agreements and easements must be in a form acceptable to the department. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02.)

17.36.335 NON-PUBLIC WATER SUPPLY SYSTEMS: EXISTING SYSTEMS (1) Existing water supply systems within a proposed subdivision must meet all requirements of this chapter or, if previously approved by the reviewing authority, the rules in effect at the time of approval. The department may grant a waiver, pursuant to ARM 17.36.601, from the well construction requirements of ARM 17.36.333 if the applicant provides adequate evidence that compliance with such requirements is not necessary to ensure an adequate water supply.

(2) The applicant shall submit information to allow the reviewing authority to review the quality, quantity, and dependability of the existing system.

(a) The applicant shall submit, for each existing water supply source, water quality analyses for nitrate (as nitrogen) and specific conductance. If an existing well is currently being used as a potable water supply within a proposed subdivision, a total coliform analysis must also be conducted. The nitrate and specific conductance sample may not be older than one year prior to the date of the application. The coliform sample may not be older than six months prior to the date of application. If an existing well is not currently used as a potable water supply but will be converted to a potable water supply, a total coliform analysis must be conducted when it is put into use. The analysis must be performed by a laboratory certified by the department of public health and human services for analyses of water samples for public water systems. The reviewing authority may not approve the use of an existing system if there is evidence that, after appropriate treatment, the concentration of any ground water constituent exceeds the human health standards in department Circular WQB-7, 2001 edition, or the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2.

(b) To characterize the water supply, the applicant must show, through a well log or other means, the depth to static water in the well and the total well depth. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02.)

17.36.336 ALTERNATE WATER SUPPLY SYSTEMS (1) A water source other than a well may be developed only if the applicant:

(a) shows that it is not economically feasible to develop a well or that ground water quality, quantity, or dependability is unacceptable; and

(b) complies with the other requirements set out in this rule.

(2) The applicant shall provide evidence to the reviewing authority that the alternate water source is sufficient in terms of quality, quantity, and dependability.

(3) Springs, when developed as an alternate water system, must be constructed in accordance with a plan approved by the reviewing authority and in accordance with department Circular DEQ-11. Springs must also meet the requirements for wells regarding quality, quantity and dependability in ARM 17.36.331 and 17.36.332.

(4) The reviewing authority may require that the applicant collect information regarding quality, quantity, and dependability of the water supply at specified times of the year.

(a) The reviewing authority may require water quality sampling to test for direct influence by surface water. Such sampling may include:

(i) testing for pH, temperature, conductivity, and turbidity;

(ii) testing for parameters with human health standards listed in department Circular WQB-7, 2001 edition;

(iii) testing for organisms that indicate direct influence by surface waters according to department Circular PWS-5, 1999 edition; and

(iv) seasonal bacteriological testing.

(b) The reviewing authority may determine the adequacy of water quantity and water dependability based upon flows during the seasonal low-flow period.

(5) Cisterns may be utilized only for individual water supplies. The reviewing authority may authorize such use only if:

(a) a potable water source is available for hauling within a reasonable distance from the cistern and:

(i) a licensed water hauler supplies water for the cistern and provides a letter verifying that the subdivision will be served by the hauler's business; or

(ii) the water supply is from a public water system and the owner of the public water system certifies that water is available from the public water system to serve the applicant's cistern;



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(b) all water is hauled and disinfected in accordance with ARM Title 17, chapter 38, subchapter 5, or a reviewing authority-approved plan; and

(c) the cistern is constructed and installed in accordance with a plan approved by the reviewing authority and in accordance with department Circular DEQ-17. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03.)

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17.36.340 LOT SIZES: EXEMPTIONS (1) This rule sets out, for purposes of the review of proposed subdivisions, the requirements for minimum lot or parcel size and the criteria for varying the minimum size. Proposed subdivisions involving mobile homes, trailer courts, campgrounds, multiple family dwellings, and commercial or industrial development are also subject to this rule.

(a) If an applicant proposes to use subsurface wastewater treatment systems, as described in department Circular DEQ-4, the minimum lot size must be one acre for each living unit and one acre for up to 700 gallons per day of design wastewater flow for commercial and other non-residential uses. The department may allow smaller lot sizes pursuant to waiver as provided in (1)(b) and ARM 17.36.601. The reviewing authority may, without a waiver, allow smaller lot sizes in accordance with the criteria set out in (1)(c) and (d). The reviewing authority may require larger lot sizes as provided in (1)(e).

(b) The department may allow, pursuant to a waiver under ARM 17.36.601, lot sizes smaller than one acre only for lots created before July 1, 1973 and for alteration of lots created before April 15, 2003 as provided in (1)(b)(i), and only after approval by the local health department. To qualify for a waiver, the applicant shall provide adequate evidence as set out in (1)(b)(ii) and (iii) to demonstrate that water quality is protected.

(i) For purposes of this rule, "alteration" of lots created before April 15, 2003, means combining lots by eliminating common boundaries, redefining lots by relocating common boundaries, or a combination of both. An alteration of lots under this rule must also meet the following requirements:

(A) it must be impracticable to create lots that comply with the minimum lot size required in (1)(a) and the alteration must improve, or at least not reduce, the capability for wastewater treatment on the affected lots;

(B) the alteration may not result in an increase in the number of affected lots;

(C) the alteration may not decrease the total acreage of all affected lots; and

(D) the number of existing wastewater systems on the affected lots may not be increased, although existing wastewater systems may be altered or replaced.

(ii) The applicant shall provide site-specific information regarding soil and aquifer characteristics, mixing zones, and impacts on surrounding properties taking into account existing and potential uses. The applicant shall also provide evidence showing that:

(A) level two treatment, as defined in ARM 17.30.702(9), is provided if a limiting layer is within 15 feet of the natural ground surface. The reviewing authority may require the applicant to construct soil test pits or ground water monitoring wells to demonstrate the depth to a limiting layer;

(B) soil properties are suitable for treatment and disposal of wastewater; and

(C) the lot has adequate space for the wastewater treatment system and replacement area, water supply, and all permanent structures including, but not limited to, driveways, houses, garages, ditches, service lines, easements, and utilities.

(iii) In order to determine site suitability, the reviewing authority may require the applicant to provide additional site-specific information, including results of ground water or soils analyses.

(c) The reviewing authority may allow lot sizes smaller than one acre, but not less than 20,000 ft<sup>2</sup> if all of the conditions in any one of (1)(c)(i) or (ii) are met:

(i) the water supply or wastewater treatment for the lots that are proposed to be smaller than one acre is provided by either a multiple user system (designed by a professional engineer) or by a public system; or

(ii) the water supply is provided by a cistern because it is not feasible to develop a water supply for the proposed subdivision that meets the water quality, quantity and dependability requirements in ARM 17.36.331 and 17.36.332, and the wastewater treatment systems for the proposed subdivision meet all of the requirements of this chapter.

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(d) The reviewing authority may allow lot sizes smaller than one acre, including lots with less than 20,000 ft<sup>2</sup>, if all of the conditions in any one of (1)(d)(i), (ii), or (iii) are met:

(i) the water supply and wastewater treatment are provided by public or municipal systems, and the well or other source for the water supply is not located on a lot that is proposed for lot size reduction;

(ii) the affected ground water beneath and surrounding the subdivision has a specific conductance equal to or greater than 7,000 microSiemens/cm at 25°C, and all existing and anticipated uses of the ground water are protected; or

(iii) the proposed subdivision is within a designated wastewater facility service area, which has been planned for by a local wastewater utility and approved by the department pursuant to Title 75, chapter 6, MCA, and the acreage of lots on which drainfields are located is at least one acre for up to 700 gallons per day of design wastewater flow; and

(A) the local wastewater utility certifies in writing that the collection systems serving the lots meet the utility's design standards and may be connected to the system when public wastewater mains are available. As-built plans for all collection systems must be submitted to the reviewing authority and to the local wastewater utility; or

(B) a dry-laid wastewater main is provided connecting the lots to a planned municipal wastewater main, with appropriate easements, and the local wastewater utility issues written approval of the design and installation of the main, and certifies that the dry-laid wastewater main, service lines, and related appurtenances may be connected to the municipal system when public wastewater mains are available. As-built plans for all dry-laid systems must be submitted to the reviewing authority and to the local wastewater utility.

(e) The reviewing authority may require lot sizes larger than those allowable under (1)(a) or may limit the wastewater flow for a lot if:

(i) wastewater flow exceeds 700 gallons per day per acre;

(ii) wastewater flow exceeds residential strength;

(iii) lots are used for a combination of residential and non-residential uses; or

(iv) if otherwise necessary to protect water quality.

(History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2003 MAR p. 1804, Eff. 8/15/03.)

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17.36.345 ADOPTION BY REFERENCE (1) For purposes of this chapter, the department hereby adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) Department Circular DEQ-1, "Standards for Water Works", 1999 edition;

(b) Department Circular DEQ-2, "Design Standards for Wastewater Facilities", 1999 edition;

(c) Department Circular DEQ-3, "Standards for Small Water Systems", 1999 edition;

(d) Department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems", 2004 edition;

(e) Department Circular WQB-7, "Montana Numeric Water Quality Standards", 2001 edition;

(f) Department Circular DEQ-8, "Montana Standards for Subdivision Storm Drainage", 2002 edition;

(g) Department Circular DEQ-11, "Montana Standards for Development of Springs for Individual and Shared Non-public Systems", 2002 edition;

(h) Department Circular DEQ-17, "Montana Standards for Cisterns (Water Storage Tanks) for Individual Non-public Systems", 2002 edition;

(i) Department Circular PWS-5, "Ground Water Under the Direct Influence of Surface Water", 1999 edition;

(j) Department Circular PWS-6, "Source Water Protection Delineation", 1999 edition; and

(k) the U.S. Department of Agriculture's National Soil Survey Handbook (USDA, NRCS, September 1999), and the Soil Survey Manual (USDA, October 1993), which contain a recognized set of methods for identifying the nature and characteristics of soils.

(2) Copies of the documents incorporated by reference in this rule may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2004 MAR p. 2589, Eff. 10/22/04.)

Sub-Chapters 4 and 5 reserved

